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147

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,699	02/12/2004	Marguerite LaSonya Johnston Wills		2783

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/776,699

**Applicant(s)**JOHNSTON WILLS, MARGUERITE  
LASONYA**Examiner**

Frederick C. Nicolas

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance: See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/12/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Formalities Letter***

1. Applicant's response to pre-exam formalities filed on 6/10/2004 has been entered

### ***Specification***

2. The abstract of the disclosure is objected to because it exceeds 150 words in length. It is important that the abstract does not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-3 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with informalities, indefinite, functional or operational language, too numerous to mention specifically and failing to conform with U.S. Patent Office practice. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited. The following noted informalities are merely exemplary thereof. The claims should be revised to conform to U. S. Patent Office practice. Applicant is advised to completely review the claims for errors as the following is not intended to cover all errors.

I- As to claim 1, line 2, the phrase "accordion-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

II- As to claim 2, line 3, the phrase "e.g." renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

III- As to claim 2, line 7, the phrase "or other like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Objections***

5. Claims 1-3 are objected to because of the following informalities: in claim 1, line 2, "A" first occurrence, should be --a--; line 4 and line 6, "Wherein" should be --wherein--.

In claim 2, line 1, "claim 1..." should be --claim 1,--; "Wherein" as recited throughout claim 2, should be --wherein--. Appropriate correction is required.

In claim 3, line 2, "Wherein" should be --wherein--.

6. Claim 3 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n).

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Llamas (DE3906323 A1).

Llamas discloses a bellowed tubular pouring spout attachment (1), which comprises a bellowed tubular section, having a series of accordion-like circumferential folds sealed together by connections resembling pleats as seen in Figure 1, wherein the bellowed tubular section is collapsible, flexible, retractable, expandable and concealable, and wherein the bellowed tubular section can be shaped and locked into a set position, such that it does not move unless forcibly impacted as seen in Figures 1-3, the base of the bellowed tubular section comprises a dual thread (3,4).

9. Claims 2-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Llamas (DE3906323).

Llamas has taught all the features of the claimed invention but is silent as to the method of molding. The claimed phrase "wherein said dual threaded base is injection molding and joined to said bellowed tubular section by over-molding" is being treated as a product by process limitation; that is, that the dual threaded base is injection molding and joined to the bellowed tubular section by over-molding. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps,

Art Unit: 3754

only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113.

Thus, even though Llamas is silent as to the process used to mold the dual threaded base and its attachment, it appears that the dual threaded base in Llamas would be the same or similar as that claimed; especially since both applicant's product and the prior art product is made of flexible.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miksis 2,556,627, Laing 2,444,995, James 5,020,702, Girouard Des. 322,728, Ha 4,602,728, Yoo 5,931,349, Sultzer, III et al. 5,722,570, Phillippe (FR2626551 A1), Wills D499,647 and Weber 4,492,324 disclose other types of pouring spout.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

Art Unit: 3754

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
February 4, 2005



Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754